

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

SERGIO LOPEZ
CHRB License #321017
Respondent

CHRB Case Nos. 17LA0198

DECISION

The attached Proposed Decision is adopted by the California Horse Racing Board as its Decision in the above-entitled matter.

The Decision is hereby remanded to the Board of Stewards to issue a ruling and order for payment of the three thousand (\$3,000.00) fine and setting the ninety (90) days of suspension.

IT IS SO ORDERED ON November 16, 2017.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

State of California

CALIFORNIA HORSE RACING BOARD

**PROPOSED DECISION
of the
BOARD OF STEWARDS**

Los Alamitos Race Course

Date: September 1, 2017

In the Matter of the Complaint Against:

Name

Respondent: Sergio Lopez

Case# 17LA0198

INTRODUCTION

This matter was heard before the Board of Stewards, Ronald Church, Tom Ward, and James Dreyer, in the Los Alamitos Stewards' Office September 1, 2017.

Present at the hearing was the Respondent, Francisco Vallejo, owners Carmen Jimenez and Sergio Lopez, Sergio Garcia translating for them, Investigator Kevin Kitashima presenting the case and the Board of Stewards. Court Reporter Michelle Derieg transcribed the proceedings.

PROCEDURAL BACKGROUND

Owner Sergio Lopez was the caretaker of record for the horse "Winger," who started in the 4th race at Los Alamitos Race Course on May 27, 2017. On June 15, 2017, Sacramento Headquarters emailed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "Winger" (Urine Sample #LA37199) tested positive for the class III prohibited drug Clenbuterol after finishing 2nd in the 4th race on May 27, 2017. Caretaker Lopez was notified of the positive on June 15, 2017.

LIST OF EXHIBITS

Complainant / State Exhibits #1, #2, #3 California Horse Racing Board Complaint
#17LA0198

Exhibit #4 Agreement between defendants, U.C. Davis
and the California Horse Racing Board.

Respondent / Defendant No documents submitted

FINDINGS OF FACT

I.

At all times herein mentioned, Respondent was licensed by the California Horse Racing Board in the license category of "owner."

II.

Respondent was the caretaker of record for the horse "Winger" when it raced in the 4th race on May 27, 2017 at Los Alamitos Race Course. "Winger" finished 2nd in the aforementioned race.

III.

A post-race urine sample (labeled sample #LA37199) was taken from "Winger" following the running of the race in accordance with California Horse Racing Board Rule #1858 (Test Sample Required) and was sent to Kenneth L. Maddy Equine Analytical Chemistry Lab of the California Horse Racing Board. This is the official testing lab of the California Horse Racing Board.

IV.

At all times herein mentioned, the chain of custody of urine sample #LA37199 from "Winger" was uninterrupted.

V.

After analyzing the sample, Maddy Laboratory reported a finding of the prohibited drug, Clenbuterol, in the sample, a class III substance.

VI.

On June 15, 2017, Respondent was notified.

VII.

The respondent elected to not to have a split sample tested.

APPLICABLE RULES

CHRB rule violations listed in the complaint

- Rule-1887 (a) (Trainer to Insure Condition of Horse)
- Rule-1843 (a, b & d) (Medication, Drugs and Other Substances)
- Rule-1843.1 (b) (Prohibited Drug Substances)
- Rule-1844 (e)6 (Authorized Medication)
- Rule-1859.5 (Disqualification Upon Positive Test Finding)

DISCUSSION

Complaint #17LA0198 scheduled to be heard on 7/21/17 was continued until 9/1/17 to allow the owner the opportunity to have a DNA test done on a hair follicle sample which had been pulled on "Winger" to see if it matched urine sample #17LA37199 taken from "Winger" following the race in question. Unfortunately there was an insufficient amount of the split sample remaining to verify if the hair and urine were or were not a match. The owner declined to exercise her option to test the hair follicles against the blood sample. The hair follicle test was negative for Clenbuterol. When Dr. Arthur was consulted concerning about the discrepancy in the two tests he explained that if this had been an isolated incident and "Winger" had received two or even three injections it is unlikely it would register in a hair follicle test. This is a plausible scenario for two reasons. The first being there was speculation that "Winger" had been taken to the match races prior to his last race and, secondly he was tested in both of his previous races and was negative for Clenbuterol. Blood and urine are the only test the Board recognizes when testing for drugs consequently the hair follicle test will carry no weight when this Board of Stewards submits its proposed decision.

Sergio Lopez, the husband of Carmen Jimenez the registered owner of "Winger", is the self-admitted caretaker of the horse and in the Steward's opinion is the licensee that is the culpable party in this situation. In his initial statement he stated he trains and cares for the horse at his ranch in Oro Grande, Calif. He hauls the horse to Los Alamitos himself and trainer Vallejo simply assists him when saddling the horse for a race. He stated the only supplement he uses at the ranch is B-15 and he never gave "Winger" Clenbuterol. Lopez initially testified he allowed his exercise rider to take "Winger" to Hesperia to work approximately ten days prior to running at Los Alamitos. Hesperia conducts match races and it is the opinion of this Board of Stewards that rather than working "Winger" Victor matched the horse and injected him with Clenbuterol. According to Lopez he did not think that Victor had a license issued by the California Horse Racing Board. When questioned during the hearing Lopez became somewhat aggressive and recanted his original statement that he had allowed Victor to take "Winger" to Hesperia alone testifying the horse was never out of his sight. This Board of Stewards leans toward his former testimony and feel that all of the players in this case Sergio Lopez carries the most responsibility.

The inquiry will now go to the penalty phase as outlined by California Horse Racing Board Rule #1843.3 (Penalties for Medication Violations), which allows for aggravating and mitigating factors that would permit deviation from the penalties outlined in the text of that rule.

This is a Class III violation with a Class "B" penalty.

A review of the aggravating and mitigating factors is now required:

- (1) *Past Medication Record of the Licensee:* Owner Sergio Lopez has had no medication or any other violations on record. Mitigating.
- (2) *The Potential of the Drug to Influence a Horse's Performance:* Aggravating. Clenbuterol can significantly enhances a horse's performance.
- (3) *The Legal Availability of the Drug:* By veterinarian prescription only. No prescription submitted. Aggravating
- (4) *Whether There is Reason to Believe the Responsible Party Knew of the Administration of the Drug or Intentionally Administered the Drug:* No testimony to that effect. Mitigating
- (5) *Steps Taken by the Owner to Safeguard the Horse:* Does not apply - neutral
- (6) *Steps Taken by the Owner to Safeguard Against Subsequent Medication Violations, Including but not Limited to, the Transfer of the Horse(s) to an Unaffiliated Trainer:* There is no evidence on this factor - neutral.
- (7) *Probability of Environmental Contamination or Inadvertent Exposure Due to Human Drug Use or Other Factors:* There is no evidence of such and is therefore neutral
- (8) *Purse of the Race:* \$11,065 mitigating.
- (9) *Whether the Drug Found to Be Present in the Official Sample was one for which the Horse was Receiving Treatment as Determined through the Process Described in Rule #1842 (Veterinary Report):* According to veterinarian reports there was no clenbuterol prescribed Aggravating
- (10) *Whether there was any Suspicious Wagering Pattern on the Race:* No evidence of any unusual wagering pattern - Mitigating
- (11) *Whether the Licensed trainer was Acting under the Advice of a Licensed Veterinarian:* Does not apply – neutral

A review of the factors reveals that there are more mitigating factors than aggravating and neutral ones.

CONCLUSION

Following a formal hearing, this Board of Stewards concludes the class III prohibited drug Clenbuterol was found in urine sample #LA37199 taken from the horse "Winger," the 2nd place finisher in the 4th race at Los Alamitos Race Course on May 27, 2017. This finding requires the disqualification of "Winger" in accordance with California Horse Racing Board Rule #1859.5.

This Board of Stewards took judicial notice of the penalty guidelines as defined in California Horse Racing Board Rule #1843.3 (Penalties for Medication Violations). Clenbuterol is a class III drug that falls in the class "B" penalty.

PROPOSED DECISION

Given all of the foregoing, this Board of Stewards makes the following recommendation in this matter:

State of California
CALIFORNIA HORSE RACING BOARD

* * *

OWNER SERGIO LOPEZ WHO RACED "WINGER" IN THE FOURTH RACE ON MAY 27, 2017 AT LOS ALAMITOS RACE COURSE IS FINE THREE THOUSAND (\$3,000.00)* AND SUSPENDED NINETY (90) DAYS PURSUANT TO CALIFORNIA HORSE RACING BOARD RULE #1887(A) AND RULE #1859.5(DISQUALIFICATION UPON POSITIVE TEST) FOR VIOLATION OF CALIFORNIA HORSE RACING BOARD RULES #1843(A)(B) AND (D)(MEDICATION, DRUGS, AND OTHER SUBSTANCES) (CLENBUTEROL – CLASS III), #1843(1)(B)(PROHBITED DRUG SUBSTANCES), AND #1844(E)(6)(AUTHORIZED MEDICATION).

DURING THE TERM OF SUSPENSION ALL LICENSES AND LICENSE PRIVILEGES OF SERGIO LOPEZ ARE SUSPENDED AND PURSUANT TO CALIFORNIA HORSE RACING BOARD RULE #1528(JURISDICTION OF STEWARDS TO SUSPEND OR FINE) SERGIO LOPEZ IS DENIED ACCESS TO ALL PREMISES IN THIS JURISDICTION

*California Horse Racing Board Rule #1532 states that all fines shall be paid to the paymaster of purses within seven (7) days of imposition [-----] or the license of the person upon whom the fine was imposed shall be suspended.

Lic# 321017 – 09/2019

Case# 17LA0198

PROPOSED DECISION

Given all of the foregoing, this Board of Stewards makes the following recommendation in this matter:

Dated October 15, 2017 by this Board of Stewards:

James Dreyer
Steward James Dreyer

Ronald Church
Steward Ronald Church

Tom Ward
Steward Tom Ward

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